

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**TOMAS D. CUESTA, SR.,
Petitioner,**

v.

Case No. 13-C-1303

**JEFFREY PUGH, Warden,
Stanley Correctional Institution,
Respondent.**

DECISION AND ORDER

Tomas D. Cuesta, Sr., has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondent has moved to dismiss the petition on the ground that it is second or successive.

The subject of Cuesta's petition is his 2001 conviction for aggravated battery, false imprisonment, and second-degree recklessly endangering safety. Cuesta filed his first habeas petition with respect to that conviction in the Eastern District of Wisconsin in July 2004. That petition was dismissed on the merits in July 2005 on the ground that it was filed after the expiration of the one-year statute of limitations. See 28 U.S.C. § 2244(d). Cuesta filed a second petition challenging his 2001 conviction in the Eastern District of Wisconsin in 2007. That petition was dismissed in September 2007 without prejudice on the ground that Cuesta did not qualify for pauper status. In 2010, Cuesta filed a third petition challenging his 2001 conviction, this time in the Western District of Wisconsin. That court dismissed the petition in January 2011 on the ground that it was an unauthorized second or successive petition. Also in 2011, Cuesta filed two requests in

the Seventh Circuit for permission to file a second or successive habeas petition. The Seventh Circuit denied those requests in February 2011.

Cuesta's present habeas petition is his fourth petition concerning his 2001 conviction. Thus, the present petition is a "second or successive habeas corpus application under § 2254" within the meaning of 28 U.S.C. § 2244(b). Under § 2244(b)(3)(A) and the cases interpreting it, a district court lacks jurisdiction to entertain a second or successive habeas petition unless the court of appeals first approves its filing. See Pavlovsky v. VanNatta, 431 F.3d 1063, 1064 (7th Cir. 2005). Because Cuesta has not obtained approval from the court of appeals, I lack jurisdiction to consider the present petition and will dismiss it for lack of subject matter jurisdiction.

For the reasons stated, **IT IS ORDERED** that the respondent's motion to dismiss the petition for lack of subject matter jurisdiction is **GRANTED**. The Clerk of Court shall enter final judgment. Pursuant to Rule 11 of the Rules Governing § 2254 Cases, I find that the petitioner has not made the showing required by 28 U.S.C. § 2253(c)(2), and therefore I will not issue a certificate of appealability.

Dated at Milwaukee, Wisconsin, this 17th day of June, 2014.

s/ Lynn Adelman

LYNN ADELMAN
District Judge